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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM COATS,

Defendant and Appellant.

C081728

(Super. Ct. No. 07F01689)

Defendant William Coats appeals from the trial court's denial of his Proposition 36 (Pen. Code,¹ § 1170.126) petition for resentencing.² He contends: 1) the trial court erred in making factual findings beyond those established in the nature or basis of his current convictions; 2) eligibility for resentencing is subject to the proof-beyond-a-reasonable-doubt standard; and 3) the court's findings denied his right to a jury trial. We affirm.

¹ Undesignated statutory references are to the Penal Code.

² Defendant filed a petition for habeas corpus, which the trial court deemed a section 1170.126 petition and then denied. While this case was given a habeas corpus case No. in the Sacramento County Superior Court, we agree with the trial court and deem this an appeal from a section 1170.126 petition.

BACKGROUND

We take the facts of defendant's crimes from our prior opinion affirming the third strike conviction which is the subject of his resentencing petition.³

"Defendant and the victim, Tammy G., have known each other for 30 years. On New Year's Eve 2006 and in early January 2007, they began a dating relationship that included sexual activity. For two weeks to a month immediately prior to February 19, 2007, they lived together in the Sacramento area.

"On the afternoon of February 19, the couple traveled through Fair Oaks in defendant's car. Tammy was driving and defendant was in the front passenger seat. The couple, who were both from the San Francisco Bay Area, began arguing because defendant wanted Tammy to drive him to Redwood City but she did not want to do so. She testified that he 'was acting kind of like a child,' and was having 'a little tantrum fit.' Their argument 'got a little bit out of hand,' and he hit her '[t]wo times' on the mouth or upper lip. After being struck, she wanted to get out of the car and tried to do so. However, she was unfamiliar with the car and did not know how to unlock the door.

"Tammy remembered little about the incident, which had occurred nine months prior to her testimony. She did not recall defendant doing anything to prevent her from unlocking the door. She recalled a male approaching the car window and asking if she needed help. She said, 'yes, I need help. Please help me get out of this car.' The man tried to open the car but he could not do so. Tammy testified that following the man's attempt, 'everything just kind of like went blank.' She did not recall other people approaching the car. She did not recall defendant pouring fingernail polish remover and rubbing alcohol on her clothing; nor did she recall telling a police officer that he had done so. She did not remember defendant stating that he 'was going to light [her] on fire and

³ We take judicial notice of our opinions in cases Nos. C057674 and C073124. (Evid. Code, §§ 452, subd. (d), 459, subd. (a)(2).)

kill [her]'; nor did she remember telling an officer that he had said so. However, she did remember that an officer had 'forced' her into an ambulance that took her to a hospital where she refused treatment. Shown photographs of her injuries that had been taken shortly after the incident, Tammy testified that, other than 'two little tiny cuts' on the top of her lips, the injuries depicted could have been preexisting because she 'was drinking' and thus 'fall[s] down a lot.'

"Sacramento County Sheriff's Deputy Jarred Hailey testified that he responded to a disturbance call and found Tammy in an ambulance with facial injuries. Her face was swollen and bruised, and she was bleeding from her mouth and nose. Hailey questioned Tammy but she was uncooperative and reluctant to answer any of his questions.

"Eventually, Tammy told Deputy Hailey that defendant had become very angry when she refused to drive him to Redwood City. As she drove down the street, he poured fingernail polish remover and rubbing alcohol on her clothing and told her he was going to 'light her on fire' and 'was going to kill her.' Defendant ignited a cigarette lighter, lit a piece of paper on fire and threw it in Tammy's direction. After throwing the burning paper, defendant punched Tammy twice to the face and once to the back of the head, causing her to stop the car on the roadway. Several motorists and pedestrians appeared on the scene. Tammy tried to get out of the car but defendant stopped her and held onto her. Eventually, people broke out the passenger window and restrained defendant, allowing Tammy to escape.

"John Hernandez testified that while he and his family were driving through Fair Oaks, the blue car ahead of them made several stops, reverse moves, and restarts. When Hernandez pulled up alongside the car at a stop sign, he could see defendant, who was sitting in the passenger seat, striking Tammy with the closed fist of his right hand, while he held her hair with his left hand. Hernandez parked his car and told his passenger to call '911.' Then he approached the passenger side of the blue car and told defendant to open the door; defendant did not respond and just kept on hitting Tammy. He appeared

to be hitting her as hard as he could. She was crying and attempting to cover her face. Hernandez heard defendant tell Tammy, 'I'm going to kill you.'

"Hernandez testified that a person from another car approached the driver's side window, tried to open the door, and evidently inquired if Tammy was okay. Hernandez heard Tammy say, 'no, I'm not okay. I need help.'

"Hernandez was convinced that 'something was going to happen.' He again told defendant to open the door and warned that he would break the window if defendant did not comply. Defendant continued to hit Tammy, so Hernandez retrieved a baseball bat from his truck and broke the passenger window.

"Stephen Miele, a telephone lineman who was working in the area, overheard commotion and hollering. He drove to the scene and arrived as Hernandez was removing the baseball bat from his truck.

"At about this time, Courtney Wyrick and her boyfriend Randy Crawford noticed the commotion and stopped their car to help. Wyrick observed defendant hitting Tammy's face repeatedly with a closed fist. Tammy was crying but not fighting back. Wyrick observed Tammy trying to unlock the car door and roll down her window. Defendant would roll the window back up and relock the door. Crawford saw defendant strike Tammy when she tried to unlock the door.

"After Hernandez broke open the car's front passenger window, Miele grabbed the hood of defendant's sweatshirt and pulled him away from Tammy. Thus thwarted from hitting Tammy with his fists, defendant resorted to kicking her arms and face. Eventually, Crawford and Miele pulled defendant part way through the shattered window and pinned him with his arms behind his back. After Tammy managed to unlock the driver's side door, Wyrick opened the door and helped Tammy get out of the car. Wyrick noticed that Tammy's face was covered with blood and that she had purple bruises around her eyes. Wyrick tried to talk to Tammy but she was hysterical and trembling.

Wyrick then returned to the driver's side of the car to turn off its ignition. Defendant kicked her.

"During the altercation Miele heard defendant say, 'I'm going to kill her. Get your hands off of me. I'm going to kill her.' Crawford heard Tammy say, 'help me, he's going to kill me.'

"Hernandez flagged down a passing fire truck. Defendant went limp and appeared to play dead when emergency personnel arrived. Defendant was removed from the car and placed on the asphalt. He resumed fighting, and it took six emergency personnel to hold him down. Eventually defendant was turned over to law enforcement.

"Wyrick and Crawford both noticed that there was a very strong odor of an unknown substance in the interior of the blue car.

"Crime scene investigators collected several items from the car's interior including tissue paper, a partially burned tissue paper roll, empty bottles of fingernail polish remover and rubbing alcohol, and three cigarette lighters.

"A Sacramento Metropolitan Fire District investigator took Tammy's blouse and slacks into evidence. When the investigator first took possession of the clothes, he noted that they felt damp. The investigator testified that rubbing (isopropyl) alcohol and fingernail polish remover (acetone or ethyl acetate) are flammable liquids.

"A state Department of Justice criminalist found residues of ethyl acetate and isopropyl alcohol on Tammy's blouse." (*People v. Coats* (Oct. 14, 2008, C057674) [nonpub. opn.] at pp. 2-7, fn. omitted.)

A jury found defendant guilty of inflicting corporal injury on a cohabitant, criminal threats, and false imprisonment, and sustained three serious felony and strike allegations in a bifurcated proceeding. (*People v. Coats, supra*, C057674, at pp. 1-2.) Defendant was sentenced to 25 years to life plus 15 years. (*Id.* at p. 2.) On appeal to this court, we affirmed the judgment and ordered correction of the abstract of judgment. (*Id.* at p. 24.)

In December 2012, defendant filed a petition for writ of habeas corpus seeking relief under section 1170.126. (*People v. Coats* (Oct. 21, 2013, C073124) [nonpub. opn.] at p. 2.) The trial court construed the habeas petition as a section 1170.126 resentencing petition, which it denied. (*People v. Coats, supra*, C073124, at p. 2.) We affirmed the trial court on appeal. (*Id.* at p. 3.)

In February 2016, defendant filed another petition for writ of habeas corpus in which he sought relief pursuant to section 1170.126, which the trial court construed the petition to be another section 1170.126 petition. The court declined to determine whether it could reconsider its previous denial or whether relief was available for counts stayed pursuant to section 654 “because petitioner has not shown good cause to entertain the petition.” Relying on the summary of facts in our affirmance of defendant’s conviction, the trial court found defendant was ineligible for resentencing because he was armed with a deadly weapon and with the intent to inflict great bodily injury on the victim during the commission of the offenses.

DISCUSSION

I

Eligibility For Resentencing

Section 1170.126, enacted as part of Proposition 36, allows defendants serving a life term for a third strike to petition for resentencing. (§ 1170.126, subd. (b).) Eligibility for resentencing is initially limited to defendants serving life terms for felonies that are neither serious nor violent. (*Id.*, subd. (e)(1).) Other factors can render a defendant ineligible for resentencing. One of the disqualifying factors, as cross-referenced in section 1170.126, subdivision (e)(2), renders an offense ineligible for recall of sentence if “[d]uring the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.” (§ 667, subd. (e)(2)(C)(iii).)

Defendant first contends the trial court erred in by finding him ineligible for resentencing based on facts beyond those that establish the nature or basis of his convictions. We find this contention is inconsistent with a recent California Supreme Court decision.⁴

In his opening brief, defendant argued *People v. Guerrero* (1988) 44 Cal.3d 343 applied to section 1170.126 eligibility determinations. According to defendant, “the cases establish that the eligibility determination was intended to a straightforward legal question.” He claimed that *Guerrero* “decided how such determination should be made.” This, according to him, precluded “ ‘relitigation’ of the circumstances of the crime.” Instead, a court was limited to determining “ ‘the nature or basis’ ” of the conviction.

However, in a case decided after briefing in this case was complete, the California Supreme Court concluded that for Proposition 36 the court is not so limited. *People v. Estrada* (2017) 3 Cal.5th 661, 665 (*Estrada*) addressed whether a trial court could rely on the underlying facts of a previously dismissed count to determine whether a defendant was ineligible for resentencing because he or she was armed with a firearm or deadly weapon during the commission of the offense. The defendant in *Estrada* pled guilty to grand theft from the person and admitted two strikes; under the plea agreement a personal use of a firearm enhancement and charges of robbery, burglary, and false imprisonment by violence, all related to the grand theft charge, were dismissed, as were other unrelated charges. (*Id.* at pp. 665-666.) He was sentenced to 25 years to life, and subsequently filed a section 1170.126 petition. (*Estrada*, at p. 666.) Relying on evidence at the preliminary hearing related to the dismissed charges and enhancement, the trial court

⁴ Since the trial court addressed the merits of defendant’s petition and did not determine whether he was procedurally barred from filing, we decline to address the People’s claim that defendant’s contention is time barred. (See § 1170.126, subd. (b) [resentencing petition must be filed within two years of effective date of Proposition 36 absent a showing of good cause].)

denied the petition on the ground that the defendant was armed during the commission of the offense, which the Court of Appeal affirmed. (*Ibid.*)

The Supreme Court affirmed the Court of Appeal. “What we hold is that a trial court may deny resentencing under the act on the basis of facts underlying previously dismissed counts.” (*Estrada, supra*, 3 Cal.5th at p. 665.) The Supreme Court derived this conclusion from the intent and purpose of Proposition 36. It noted that “section 1170.12, subdivision (c)(2)(C)(iii) is best read as excluding from resentencing ‘broadly inclusive categories of offenders who, during commission of their crimes--and regardless of those crimes’ basic statutory elements--used a firearm, were armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.” (*Estrada*, at p. 670.) Specifically on point as to defendant’s contention, the Supreme Court also found “it more faithful to Proposition 36’s crucial distinction to interpret its conception of violent offenders as including not only those inmates convicted of inherently violent offenses *but also those who committed nonviolent offenses in a violent manner.*” (*Estrada*, at p. 671, italics added.)

Additional support for the Supreme Court’s holding was found in the initiative’s structure. Proposition 36 incorporated the disqualifying categories directly into the three strikes law. (*Estrada, supra*, 3 Cal.5th at p. 671.) Since a prosecutor had little incentive before Proposition 36 to prove conduct that would disqualify a defendant from resentencing, the Supreme Court thought “it unlikely that it was part of the Act’s design to prevent courts reviewing a recall petition from considering conduct beyond that implied by the judgment. Given the importance of the Act’s distinction between violent and nonviolent criminal conduct, it seems implausible that the Act is best understood to condition ineligibility on an indicator of violence that the prosecution had no incentive to incorporate into the judgment. Accordingly, section 1170.12, subdivision (c)(2)(C)(iii) would be substantially underinclusive were we to interpret it to apply only to cases in which the judgment implies disqualifying conduct.” (*Estrada*, at pp. 671-672.)

The defendant in *Estrada* also cited *Guerrero* and argued that this approach was “inconsistent with our approach to sentence enhancements for prior convictions.” (*Estrada, supra*, 3 Cal.5th at p. 672.) The Supreme Court summarily rejected this contention. “Even assuming that *Estrada*’s interpretation of those cases is correct, nothing in Proposition 36 or any material we might examine to understand its purpose suggests the Act incorporated such a substantive limitation. Precluding a court from considering facts not encompassed within the judgment of conviction would be inconsistent with the text, structure, and purpose of sections 1170.12, subdivision (c)(2)(C)(iii) and 1170.126, subdivision (e)(2)--and would, by consequence, impose an unnecessary limitation.” (*Estrada*, at p. 672.)

We asked for supplemental briefing on *Estrada*. Defendant claims in his supplemental brief that *Estrada* is distinguishable because “[u]nlike *Estrada*, appellant relies on *Guerrero* as the focus of his argument,” specifically, that *Guerrero* prevents the prosecution “from relitigating the circumstances of the crime committed years ago.” To the extent we interpret *Estrada* as rejecting his claims, defendant asks us “to more fully address the limitation imposed by *Guerrero* in determining his eligibility for resentencing under Proposition 36.” We reject this narrow reading of *Estrada*.

This case involves a narrow application of *Estrada*’s rule. Unlike *Estrada*, this case does not involve a trial court’s reliance on preliminary hearing testimony regarding dismissed charges, but our summary of the trial testimony⁵ regarding charges for which he was convicted and now seeks resentencing. As the trial court correctly noted, those facts establish that during the commission of his current offenses, defendant was armed with a deadly weapon, a flammable liquid and a cigarette lighter, and with the intent to

⁵ Our summary of the facts of defendant’s crime in our prior opinion is part of the record of conviction. (*People v. Woodell* (1998) 17 Cal.4th 448, 455.)

inflict great bodily injury on the victim. Applying *Estrada*, we conclude that the trial court could rely on those facts in determining him ineligible for resentencing.

II

Proof Beyond A Reasonable Doubt

Defendant contends that ineligibility for resentencing must be proven beyond a reasonable doubt as a matter of due process.⁶

Defendant relies primarily on *People v. Arevalo* (2016) 244 Cal.App.4th 836. The defendant in *Arevalo* was convicted in a bench trial of grand theft auto and driving a vehicle without the owner's consent and sentenced to an indeterminate term under the three strikes law. (*Id.* at p. 841.) The trial court acquitted the defendant of the charge of felon in possession of a firearm and found an armed with a firearm allegation not true. (*Ibid.*) The defendant subsequently petitioned for resentencing under section 1170.126. (*Arevalo*, at p. 841.) Applying the preponderance standard, the trial court found the defendant ineligible for resentencing because he was armed in the commission of his offenses. (*Id.* at pp. 841-842.) In reversing, the Court of Appeal held: "Under a properly applied 'beyond a reasonable doubt' standard, *Arevalo*'s acquittal on the weapon possession charge, and the not-true finding on the allegation of being armed with a firearm, are preclusive of a determination that he is ineligible for resentencing consideration. As a matter of law, therefore, *Arevalo* is eligible for resentencing." (*Id.* at p. 842.)

The *Arevalo* court found that the consequences to the defendant of an ineligibility finding, a potentially much greater sentence than if he were found eligible, required a heightened standard of proof as a matter of due process. (*People v. Arevalo, supra*,

⁶ This issue is currently before the California Supreme Court. (See *People v. Frierson* (2016) 1 Cal.App.5th 788, review granted Oct. 19, 2016, S236728; *People v. Newman* (2016) 2 Cal.App.5th 718, review granted Nov. 22, 2016, S237491.)

244 Cal.App.4th at p. 852; see *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1349-1350 (conc. opn. of Raye, P. J.).) While the *Bradford* concurrence found the clear and convincing standard appropriate (see *Bradford*, at p. 1350 (conc. opn. of Raye, P. J.)), the *Arevalo* court required application of the beyond-a-reasonable-doubt standard. “[I]n order to safeguard the intended parallel structure of the Act--the heightened standard of proof should be beyond a reasonable doubt. Under a lesser standard of proof, nothing would prevent the trial court from disqualifying a defendant from resentencing eligibility consideration by completely revisiting an earlier trial, and turning acquittals and not-true enhancement findings into their opposites.” (*Arevalo*, at p. 853.)

We need not determine whether to apply *Arevalo*’s reasoning because this case is distinguishable from *Arevalo*; the trial court here did not state it was applying the preponderance standard⁷ and used facts from the charges upon which he sought resentencing, rather than conduct underlying an acquittal and a not-true enhancement finding. The trial court relied on our summary of facts from our affirmance of defendant’s conviction to find he was armed with a dangerous weapon and therefore ineligible. The trial court’s finding was correct *under any standard of proof*.

⁷ We reject defendant’s claim that we should presume the trial court applied the preponderance standard because “the generally accepted rule . . . is that the preponderance of evidence standard applies for determining eligibility.” (See, e.g., *People v. Newman*, *supra*, 2 Cal.App.5th at p. 729 [cited for potentially persuasive value only]; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1040; see also Evid. Code, § 115 [preponderance is the general standard of proof].) When the trial court denied the petition on March 10, 2016, there was a conflict as to what standard of proof should apply to a finding that rendered a defendant ineligible, as the *Bradford* concurrence and *Arevalo* had both been rendered by that time. There is no reason to presume the trial court applied the preponderance standard when it was silent regarding the standard of proof.

III

Right To A Jury Trial

Relying on *Alleyne v. United States* (2013) 570 U.S. ____ [186 L.Ed.2d 314], defendant asserts the trial court deprived him of his constitutional right to a jury trial when it found him ineligible for relief based on facts not found true by a jury.

The cases addressing this issue have uniformly held that a defendant is not entitled to a jury trial on the eligibility finding. (See, e.g., *People v. Perez* (2016) 3 Cal.App.5th 812, 822, fn. 10; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 803-805; *People v. Guilford* (2014) 228 Cal.App.4th 651, 662-663 [rejecting argument defendant makes in this case based on *Alleyne v. United States*]; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1060 [*Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] and its progeny do not apply to a determination of eligibility for resentencing under the Three Strikes Reform Act].) Although *Estrada* did not address this issue, the fact that our Supreme Court upheld a finding of ineligibility based on evidence at a preliminary hearing related to dismissed charges is consistent with the numerous decisions rejecting this claim.

Defendant gives us no reason to depart from these decisions. His claim is without merit.

DISPOSITION

The judgment (order) is affirmed.

/s/
Robie, Acting P. J.

We concur:

/s/
Hoch, J.

/s/
Renner, J.